

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program

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Mr. Warren M. Bullock
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Attn: Mr. Warren Bullock
DRB Chairman

January 11, 2008

Contract No. 04-0120E4
04-SF-80-13.4, 13.8
SAS T1 & E2 Foundations
SFOBB-ESSSP

Letter No. 05.013.01-000011

Subject: Request for Clarification - DRB Recommendation, NOPC #6

Dear Warren,

The Department received the Disputes Review Board (DRB) Recommendation for Notice of Potential Claim (NOPC) hearing regarding the Trans Bay Steel Welding Operator Trainees on January 2, 2008 (nominally). In accordance with Section 5-5.15, Dispute Review Board, this letter requests clarification on three issues described in the report. These issues are 1) the DRB determination of Constructive Notice, 2) the DRB interpretation of the AWS D1.1:2002 code and the Special Provisions with respect to welding operator qualification, and 3) the DRB inclusion of arguments not presented in the Department or Contractor Reports, the October 30, 2007, meeting or in the clarification submissions.

1) Constructive Notice

The Board has based many of its conclusions and recommendations on the Department's letter dated May 10, 2006 (Letter No. 05.003.01-001137), referred to in paragraph 6. The Department's letter was not associated with the use by TBS of unqualified welding operator trainees to perform production welding. It was written with respect to the unrelated issue of previously qualified welding operators performing work on a particular non-standard joint. These unqualified welding operators had performed the AWS Code-required qualification test, but the test plates had been awaiting mechanical testing for weeks, while the welding operators continued to perform the welding on these non-standard joints without approval. Unqualified welding operator trainees were not performing the welds on this type of non-standard joint. The Department presented this to the Board at the meeting on October 30, 2007. The representative of TBS stated during the meeting on October 30, 2007, that he did not believe that the Department meant Letter No. 05.003.01-001137 to be in reference to the unqualified welding operator trainees. On what basis does the Board conclude that the Department's letter refers to the work being performed by the unqualified welding

operator trainees? If the Department's Letter No. 05.003.01-00137 were removed from consideration, on what would the Board base its conclusions and recommendation?

The letter from TBS to KFM dated May 11, 2006 (KFM-LET-164 dated May 23, 2007), referenced in paragraph 29, was also in regard to the qualification of welding operators to perform welds on the non-standard joint, and although it mentions the welder trainee issue, it mentions it only as "an unfortunate backdrop." The request for a CCO cited by the Board in paragraph 29 specifically addresses the same non-trainee-welder qualification issue. Paragraph 30 concludes with the DRB using these letters to draw conclusions not relevant to the correspondence intent. In the DRB conclusions in paragraph 64, the DRB refers to this correspondence "between May 2006 and June 2006" as constructive notice. What other documentation presented in the October 30, 2007, meeting can the DRB use to support its conclusion that any written constructive notice existed?

2) Code and Specification Interpretation

The DRB concludes in paragraphs 53 and 54 that the intent of the code allows production welding by un-qualified and un-approved trainees welding operators to be supervised by qualified and approved welding operators. Is the DRB suggesting that a shop may use a single qualified and approved welding operator to weld at several welding stations for which he has responsible charge?

In paragraphs 53 and 54 of the recommendation, the DRB states that it "believes that it is the intent of the AWS Code and Contract specifications in requiring all SAW process production welds to be performed by qualified welding operators implies that the qualified welding operator will effectively control, monitor and supervise the welding process..." and that trainees may be "...present and assisting qualified welding operators performing the SAW production process, as long as the qualified welding operator remains present full time and directly supervises and controls the welding operation." In fact, the AWS Code requires, in Section 4.1.2, that "...welding operators ...shall have been qualified by applicable tests..." and in Section 6.4.1, that "The Inspector shall allow welding to be performed only by...welding operators...who are qualified." What is the basis in the AWS Code for the concept of "effective control"?

3) Arguments not presented

The DRB concludes, in paragraphs 62 through 67 and 70, that the Contractor was proceeding with negotiations with respect to CCO 39 and the welding operator trainee issue based upon the understanding that they could protest the change order. What is the basis for the Board's conclusion that the negotiations related to CCO 39 were ongoing after the Department notified the Contractor that the CCO would not be issued?

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If you have any questions regarding this matter please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Woods', with a stylized flourish at the end.

Mark Woods
Senior Bridge Engineer

For: Pedro J. Sanchez
Resident Engineer

cc: R. Maasberg
R. Lewis
P. Sanchez
M. Vilcheck
D. Proctor

file: 05.013.01, 21.002, 62.001.06